

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 BROWNSVILLE DIVISION
4 UNITED STATES OF AMERICA § CASE NO. 1:13-CR-003
5 VERSUS § BROWNSVILLE, TEXAS
6 WAYNE E. BALL § THURSDAY,
 § JANUARY 17, 2013
 § 3:05 P.M. TO 3:41 P.M.

7 REARRAIGNMENT
8 BEFORE THE HONORABLE RANDY CRANE
9 UNITED STATES DISTRICT JUDGE

10 APPEARANCES:
11 FOR PLAINTIFF/DEFENDANT: SEE NEXT PAGE
12 COURT RECORDER: JUANITA TABARES
13 COURT CLERK: STELLA CAVAZOS
14 OFFICIAL INTERPRETER: SANDRA CORTEZ
15 (PRESENT, NOT NEEDED)
16 USPO: NELLIE ELIZONDO
17 USPTS: STEPHEN ALVAREZ
18 USM: MATTHEW LESCH

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APPEARANCES:

FOR THE DEFENDANT: CARLOS ANDRES GARCIA, ESQ.
1305 E. GRIFFIN PARKWAY
MISSION, TX 78572

1 BROWNSVILLE, TEXAS; THURSDAY, JANUARY 17, 2013; 3:05 P.M.

2 THE COURT: All right. Let me call 13-CR-003,
3 United States of America versus Wayne Ball.

4 Announcements, please.

5 MR. KELLY: Your Honor, Timothy Kelly for the
6 United States and I'm here with my partner, Eric Gibson.

7 MR. GARCIA: Your Honor, Carlos Garcia for
8 Mr. Ball, present and ready for a plea.

9 THE COURT: All right. So this afternoon we're
10 scheduled for a Plea to a Criminal Information?

11 MR. KELLY: Yes, Your Honor.

12 THE COURT: All right. So Mr. Ball is here?

13 MR. GARCIA: Yes, Your Honor.

14 THE COURT: Is that Mr. Ball?

15 DEFENDANT BALL: Yes, Your Honor.

16 THE COURT: Mr. Ball, if you could step forward, I
17 need to have the oath administered to you before we begin,
18 if you could just raise your right hand at this time?

19 (Defendant sworn.)

20 THE COURT: Mr. Ball, you're now under oath. This
21 means you're required to answer all of my questions
22 truthfully and I'm required to remind you that if you did
23 not answer all of them truthfully, then you could be later
24 prosecuted for committing perjury and/or for making a false
25 statement.

1 Do you understand this?

2 DEFENDANT BALL: I do, sir.

3 THE COURT: Mr. Ball, I've been told that you
4 intend to plead guilty to a Criminal Information. Before I
5 can accept that guilty plea, I need to make certain that
6 it's done of your own free will and in accordance with law
7 and that's because when you plead guilty, you do give up
8 some important rights. I'm going to explain some of your
9 rights to you here this afternoon.

10 If at any point during this process, you do not
11 understand something that I ask or say, please let me know
12 and I'll be happy to explain myself to you.

13 If we can begin with stating your full name for
14 the Record?

15 DEFENDANT BALL: Yes, sir. Wayne Elgin Ball.

16 THE COURT: Mr. Ball, how old are you?

17 DEFENDANT BALL: Forty years old.

18 THE COURT: And how far did you go in school?

19 DEFENDANT BALL: I have a Bachelor's Degree, sir.

20 THE COURT: Where from?

21 DEFENDANT BALL: University of Texas Pan American.

22 THE COURT: And generally are you in good health?

23 DEFENDANT BALL: Yes, sir.

24 THE COURT: Have you ever been treated for any
25 mental illness or mental disorder?

1 DEFENDANT BALL: No, sir.

2 THE COURT: And in the past 24 hours, have you
3 taken any medicine, pills, drugs or alcohol?

4 DEFENDANT BALL: No, sir.

5 THE COURT: And have you understood all my
6 questions and do you believe you're competent to continue
7 with this hearing?

8 DEFENDANT BALL: Yes, sir.

9 THE COURT: Mr. Garcia, any reason to doubt your
10 client's competence?

11 MR. GARCIA: No, Your Honor.

12 THE COURT: All right. Mr. Ball, I've been
13 advised that you intend to plead to a Criminal Information.
14 As you may know, in this country you cannot be charged with
15 a felony offense unless a Grand Jury finds that there is a
16 probable cause to believe a crime has been committed and
17 that you committed it.

18 In this case, however, the charges have been
19 brought against you by the filing of a "Criminal
20 Information." If you waive your right to an Indictment,
21 then this case will proceed against you just as though you
22 had been indicted by a Grand Jury.

23 If you do not waive your right to Indictment, then
24 the Government may present its evidence to a Grand Jury and
25 ask the Grand Jury to return an Indictment against you.

1 As you know, a Grand Jury is a group of people, no
2 more than 23, no less than 16, and at least 12 of them must
3 find that there probable cause to believe a crime has been
4 committed and that you committed it before you can be
5 indicted.

6 Have you discussed this right to Indictment by a
7 Grand Jury with your lawyer?

8 DEFENDANT BALL: Yes, sir.

9 THE COURT: Do you have any questions about this
10 right to an Indictment by a Grand Jury?

11 DEFENDANT BALL: No, sir.

12 THE COURT: Is anyone promising you anything, or
13 is anyone threatened you in any way to cause you to waive
14 your right to an Indictment by a Grand Jury?

15 DEFENDANT BALL: No, sir.

16 THE COURT: And would you like at this time to
17 waive your right to Indictment by a Grand Jury and proceed
18 today with the filing of this Criminal Information?

19 DEFENDANT BALL: Yes, sir.

20 THE COURT: All right. If you could please
21 execute the waiver here in open court?

22 Have you-all done that?

23 (Pause in the proceedings.)

24 THE COURT: Okay. The Court finds that the
25 Defendant's waiver of his right to an Indictment by a Grand

1 Jury has been knowingly and voluntarily waived. The Record
2 will also reflect that the Defendant has executed the
3 written waiver here in open court, as well as his Counsel.
4 The Court, therefore, accepts this waiver of an Indictment.

5 And Mr. Ball, have you received a copy or been
6 shown a copy of the Criminal Information that's pending
7 against you? That's just the formal charge.

8 DEFENDANT BALL: Yes, sir.

9 THE COURT: Have you had an opportunity to discuss
10 it with your attorney?

11 DEFENDANT BALL: Yes, sir. I have.

12 THE COURT: Do you have any questions about this
13 charge that your lawyer could not answer for you?

14 DEFENDANT BALL: No, sir.

15 THE COURT: And are you satisfied with the
16 representation and advice that your lawyer has given to you
17 in this case?

18 DEFENDANT BALL: I am, sir.

19 THE COURT: All right. I'm going to at this time
20 now have the lawyer for the Government read the Criminal
21 Information. When he's finished, you're going to be asked
22 whether you plead guilty or not guilty to it, so please
23 listen carefully.

24 This is just a one-count Information, correct?

25 MR. KELLY: Yes, Your Honor.

1 THE COURT: All right. Please listen carefully,
2 Mr. Ball.

3 MR. KELLY: Your Honor, unless otherwise
4 specified, at all relevant times United States Department of
5 Homeland Security was a department and agency within the
6 Executive Branch of the United States Government, charged
7 with protecting the United States from threats to the
8 national security, including ensuring the security of the
9 borders of the United States.

10 DHS has included agencies, including among others,
11 United States Customs and Border Protection, "CBP," and the
12 United States Immigration and Customs Enforcement, "ICE."

13 CBP was the DHS component agency with the
14 day-to-day responsibility for securing the borders of the
15 United States, keeping terrorists and their weapons out of
16 the United States, enforcing immigration and drug laws, and
17 facilitating lawful international trade and travel.

18 ICE was DHS' principle investigative component
19 charged with conducting civil and criminal investigations to
20 promote Homeland security and public safety, as well as
21 conducting operations enforcing immigration laws and
22 removing those illegally present in the United States from
23 within its borders.

24 The Department of Homeland Security's Office of
25 Inspector General, or "DHSOIG," was an independent

1 objective, inspection, audit and investigative body charged
2 with promoting effectiveness, efficiency, and economy in
3 DHS' programs and operations in preventing and detecting
4 fraud, abuse, mismanagement, and waste, including criminal
5 conduct in such programs and operations.

6 In its semi-annual report to Congress dated
7 April 1st, 2011, through September 30th, 2011, DHSOIG
8 reported that it had initiated 715 investigations, closed
9 433 investigations, referred 202 investigations for criminal
10 prosecution, had 81 investigations accepted for prosecution
11 and had 74 investigations declined for prosecution.

12 DHSOIG also reported that its investigations
13 resulted in 110 Indictments and 136 convictions, and that it
14 had 2,564 investigations open at the time of the report.

15 DHSOIG maintained its headquarters in Washington,
16 DC. DHSOIG was a department and agency within the Executive
17 Branch of the United States Government.

18 DHSOIG was also the principle component within DHS
19 with the responsibility to investigate alleged criminal
20 activity by DHS employees, including corruption by CBP and
21 ICE personnel effecting the integrity of the borders of the
22 United States. DHSOIG maintained a field office near the
23 southern border of the United States in McAllen, Texas, that
24 is "MCA."

25 Defendant Wayne E. Ball served as a Special Agent

1 with DHSOIG at MCA from in or about January 2009 to in or
2 about November 2012. Supervisor A served as one of
3 Defendant Ball's supervisors at MCA. Special Agent A served
4 as a Special Agent with DHSOIG from in or about January 2011
5 to the present.

11 In or about June or July 2011, Criminal
12 Investigation One was assisted to Special Agent A and his
13 partner.

14 Memoranda of Activity were documents required to
15 be used by DHSOIG Special Agents to record various types of
16 investigative activity, including interviews, reviews of
17 records, arrests, search warrant executions, service of
18 subpoenas and surveillance. MOAs were required to be
19 completed truthfully and accurately. MOAs were also
20 required to be signed by the Special Agent who authored the
21 MOA, as well as a supervisor, and for them to be maintained
22 in the investigative case file.

According to DHSOIG policy, MOAs were required to be submitted for approval by a Special Agent within five working days after the activity, or as soon thereafter as

1 was practical.

2 In September 2011, DHSOIG conducted an internal
3 inspection of MCA to evaluate whether it's internal
4 investigative standards and policies were being followed at
5 MCA. Inspection had originally been scheduled for February
6 2011. Since in or about February 2011 both the lead
7 inspector and MCA management, including Supervisor A, had
8 been preparing for the inspection, including through
9 discussions with each other.

10 The Conspiracy and Its Objects: Beginning in or
11 about 2011 and continuing until in or about January 2012 in
12 the Southern District of Texas and elsewhere, Defendant
13 Ball, Supervisor A, and Special Agent A and others known and
14 unknown to the United States, did unlawfully combine,
15 conspire, confederate and agree together and agree with each
16 other to commit the following offenses against the
17 United States:

18 (A) To falsify documents and to make false entries
19 and records with the intent to impede, obstruct and
20 influence the investigation and proper administration of a
21 matter within the jurisdiction of DHSOIG and in relation to
22 and in contemplation of any such matter in violation of
23 18 USC Section 1519; and

24 (B) To intentionally and corruptly endeavor to
25 influence, obstruct and impede the due and proper

1 administration of the law under which a proceeding, to-wit,
2 an internal DHSOIG inspection of MCA, was pending before
3 DHSOIG, in violation of 18 USC 1505.

4 The Purpose of the Conspiracy: It was a purpose
5 of the conspiracy to conceal severe lapses in investigative
6 standards and internal policies, including significant
7 periods of inactivity in pending criminal investigations
8 over periods of months or years from DHSOIG personnel
9 conducting the internal inspection and from DHSOIG
10 headquarters. More specifically, to conceal those lapses,
11 in particular, criminal investigations, by falsifying
12 investigative activity, which in truth and fact had not
13 taken place.

14 Manner and Means: A conspiracy was carried out by
15 the following manner and means: At Supervisor A's
16 direction, Special Agent A drafted false MOAs to fill the
17 gaps of inactivity in Criminal Investigation One. Because
18 the MOAs were intended to fill gaps that had occurred when
19 Special Agent A was either not present at MCA to investigate
20 cases, or was not employed by DHSOIG at all. At
21 Supervisor A's direction, Special Agent A attributed the
22 investigative activity to Defendant Ball.

23 At Supervisor A's direction, Defendant Ball signed
24 and backdated the false MOAs. Supervisor A also signed and
25 backdated the false MOAs, and the MOAs were placed in the

1 DHSOIG case file for Criminal Investigation One in advance
2 of the internal inspection of MCA.

3 Overt Act: In furtherance of the conspiracy and
4 to achieve its purposes, in or about September 2011 in the
5 Southern District of Texas, Defendant Ball signed and
6 backdated the false MOAs related to Criminal Investigation
7 One that were provided to him by Special Agent A, on
8 violation of Title 18 USC Section 371.

9 THE COURT: All right. Mr. Ball, to this charge,
10 how do you plead? Guilty or not guilty?

11 DEFENDANT BALL: Guilty, Your Honor. Guilty.

12 THE COURT: Mr. Ball, under the Constitution and
13 laws of this country, you do have the right to plead not
14 guilty and if you plead not guilty, then you have the right
15 to a trial before either a Jury or a Judge on this charge
16 that's pending against you.

17 Do you understand this right?

18 DEFENDANT BALL: I do.

19 THE COURT: At a trial you would also have the
20 right to the assistance of a lawyer whether you could afford
21 one or not. If you could not afford one, then one would be
22 appointed to represent you at all stages of these
23 proceedings against you at no cost to you.

24 Do you understand this?

25 DEFENDANT BALL: Understood, sir.

1 THE COURT: If you desire to plead not guilty, in
2 order to find you guilty, the Government would have to prove
3 at a trial by competent evidence and beyond a reasonable
4 doubt these charges that are pending against you.

5 Do you understand this?

6 DEFENDANT BALL: Yes, sir.

7 THE COURT: At a trial you would be presumed
8 innocent. It would not be your burden to have to prove
9 yourself innocent.

10 Do you understand this?

11 DEFENDANT BALL: Yes, sir.

12 THE COURT: And in the course of a trial, the
13 witnesses for the Government would have to come into the
14 courtroom and testify in front of you and your lawyer. Your
15 lawyer could question the witnesses against you, object to
16 any evidence offered by the Government, and then you would
17 have the right to present any evidence in defense of these
18 charges that you might want to present.

19 Do you understand this?

20 DEFENDANT BALL: Yes, sir.

21 THE COURT: This would also include the right to
22 take the witness stand and to testify in your own defense if
23 you desire. However, you could not be forced to testify or
24 compelled to incriminate yourself and nobody could hold it
25 against you if you chose not to testify at a trial.

1 Do you understand this?

2 DEFENDANT BALL: Yes, sir.

3 THE COURT: When you plead guilty, however, you
4 give up this right against incriminating yourself because in
5 order for me to be satisfied that you actually committed
6 this offense, I will need to ask you some questions about
7 these events and you could not refuse to answer them.

8 Do you understand this?

9 DEFENDANT BALL: I do, sir.

10 THE COURT: Also, if I accept your guilty plea,
11 you'll be giving up these rights that I have just discussed
12 with you because there will be no trial in your case. I
13 will simply enter a judgment of guilty and sentence you on
14 the basis of your plea of guilty here this afternoon.

15 Do you understand that there will be no trial in
16 your case?

17 DEFENDANT BALL: I do, sir.

18 THE COURT: And Mr. Ball, in your case do you
19 understand that I could -- or the Court could send you to
20 prison for up to five years and fine you up to \$250,000 for
21 this offense?

22 DEFENDANT BALL: Yes, sir.

23 THE COURT: In addition to the imprisonment and
24 fine that you face, the Court would also be required to
25 impose upon you a supervised-release term. This is a term

1 of supervision that starts as soon as you get out of prison
2 and is, therefore, in addition to any imprisonment and in
3 your case you could be supervised by the US Probation Office
4 for up to three years after you get out of prison.

5 Do you understand this?

6 DEFENDANT BALL: Yes, sir.

7 THE COURT: I'm also required to impose upon you a
8 \$100 special assessment.

9 Do you understand this?

10 DEFENDANT BALL: Yes, sir.

11 THE COURT: Have you spoken with your attorney
12 about these Sentencing Commission Guidelines and how these
13 Sentencing Guidelines might apply in your case?

14 DEFENDANT BALL: I have, sir.

15 THE COURT: I will not be able to determine
16 exactly which Sentencing Guideline applies in your case
17 until after the Probation Office has prepared the
18 Presentence Report about you, and you and your lawyer have
19 had the opportunity to review and object to this report.

20 Do you understand this?

21 DEFENDANT BALL: Yes, sir.

22 THE COURT: Once the Probation Office does
23 determine which of the Sentencing Guideline ranges does
24 apply in your case, the Court may nevertheless vary or
25 depart from these guidelines and you could be sentenced up

1 to the maximum punishment that you face in your case and you
2 would not be able to take back your guilty plea.

3 Do you understand this about the advisory
4 non-binding nature of the Sentencing Guidelines?

5 DEFENDANT BALL: Yes, sir.

6 THE COURT: Has anybody promised you or guaranteed
7 to you the sentence that you are going to receive in this
8 case?

9 DEFENDANT BALL: No, sir.

10 THE COURT: Has anyone attempted in any way to
11 force you to plead guilty here this afternoon or threaten
12 you or told you that if you did not plead guilty, some
13 further action or charges would be brought against you?

14 DEFENDANT BALL: No, sir.

15 THE COURT: This offense to which you've just
16 plead guilty is a felony offense and if I accept your guilty
17 plea, then you will be adjudged guilty of this felony
18 offense, which will have consequences to you. You'll lose
19 certain rights that you might have had in this country, like
20 the right to possess a firearm and ammunition, the right to
21 certain Government licenses, employments or benefits, and --
22 sorry, you're a US Citizen, so the other doesn't apply.

23 Do you understand these other consequences of your
24 guilty plea?

25 DEFENDANT BALL: I do, Your Honor.

1 THE COURT: All right. And is there a Plea
2 Agreement in this case?

3 MR. KELLY: Yes, there is, Your Honor.

4 THE COURT: If you would please describe it to the
5 Court?

6 MR. KELLY: Yes, Your Honor. It is a
7 approximately 14-page agreement that sets out -- and
8 attached to it is our factual stipulations that form the
9 factual basis for the plea. It sets out the charges and
10 statutory penalties that we've discussed here today. The
11 Parties have -- it sets out certain stipulations as to
12 Guidelines that -- the Guideline recommendations that the
13 Parties have agreed to, agreed to advocate to the Court at
14 the time of sentencing that would apply to the Defendant.

15 In other words, the Parties have reached a
16 stipulated Guideline range that would apply to Mr. Ball.

17 There is further agreement as to sentencing
18 allocution. There is an aspect of the agreement that
19 involves the Defendant cooperating further with the
20 Government and so in setting out the rights and obligations
21 of the Defendant under that cooperation portion of the
22 agreement, there is a portion of the agreement that
23 describes that the Court -- as the Court has indicated here
24 today -- is not bound by the agreement.

25 There is a portion of the agreement that sets out

1 the waiver of certain appeal rights the Defendant has waived
2 as part of the agreement.

3 There is a portion of the agreement that deals
4 with the release and detention of the Defendant in that
5 while the Court will make the final decision regarding the
6 Defendant's bond status, the United States has agreed not to
7 a change in the release conditions. Whether the Defendant
8 is released here today, there's a portion of the agreement
9 that sets out the consequences for the Defendant if he were
10 to breach the agreement and that the Defendant -- and that
11 the agreement is the complete agreement between the Parties.

12 THE COURT: All right. Mr. Ball, did you have an
13 opportunity to review and discuss this Plea Agreement with
14 your lawyer before you signed it?

15 DEFENDANT BALL: I have, sir.

16 THE COURT: Did you have any questions about it
17 that your lawyer could not answer for you?

18 DEFENDANT BALL: No, sir.

19 THE COURT: Your Plea Agreement with the
20 Government is a non-binding Plea Agreement and what that
21 means is it is not binding on the Court and the Court is not
22 required to follow it, and you would have no right to take
23 back your guilty plea if the Court did not follow the Plea
24 Agreement, even if it resulted in a sentence less favorable
25 to you than what may have been contemplated by your Plea

1 Agreement.

2 Do you understand this?

3 DEFENDANT BALL: Yes, sir.

4 THE COURT: All right. Knowing now all of the
5 rights that I have explained to you here throughout this
6 afternoon, would you at this time like to change your mind
7 and take back your guilty plea?

8 DEFENDANT BALL: No, sir.

9 THE COURT: All right. I'm now going to then ask
10 the Government to describe for me the facts in this case
11 that the Government was prepared to prove had you proceeded
12 forward to a trial. It's important that you listen
13 carefully because when he's finished describing these facts
14 about you, I'm going to ask you whether his statements were
15 all correct.

16 You may proceed.

17 MR. KELLY: Your Honor, the United States would
18 have been prepared to prove beyond a reasonable doubt that
19 the United States Department of Homeland Security is a
20 department and agency within the Executive Branch of the
21 United States Government charged with protecting the
22 United States from threats to the national security,
23 including ensuring the security of the borders of the
24 United States.

25 (2) That DHS' component agencies include, among

1 others, United States Customs and Border Protection and the
2 United States Immigration and Customs Enforcement. CBP is
3 this DHS component agency with day-to-day responsibility for
4 securing the borders of the United States, keeping
5 terrorists and their weapons out of the United States,
6 enforcing immigration and drug laws, and facilitating lawful
7 international trade and travel.

8 ICE is DHS's principal investigative component
9 charged with conducting civil and criminal investigations,
10 to protect Homeland security and public safety, as well as
11 conducting operations, enforcing immigration laws and
12 removing those illegally present in the United States from
13 within its borders.

14 The Department of Homeland Security Office of
15 Inspector General is an independent and objective
16 inspection, audit and investigative body charged with
17 promoting effectiveness, efficiency and economy in the DHS'
18 programs and operations, and preventing and detecting fraud,
19 abuse, mismanagement and waste, including criminal conduct,
20 in such programs and operations.

21 DHOIG maintains its headquarters in Washington,
22 DC. DHOIG is a department and agency within the Executive
23 Branch of the United States Government.

24 DHOIG is also a principle component within DHS
25 with the responsibility to investigate alleged criminal

1 activity by DHS employees, including corruption by CBP and
2 ICE personnel, effecting the integrity of the borders of the
3 United States.

4 DHOIG maintains a field office near the southern
5 border of the United States in McAllen, Texas; otherwise
6 known as "MCA."

7 Defendant Wayne E. Ball served as a Special Agent
8 with DHOIG at MCA from in or about January 2009 to
9 in or about November 2012.

10 As of August and September 2011, Supervisor A was
11 one of Defendant Ball's supervisors at MCA. Special A has
12 served as a Special Agent with DHOIG from in or about
13 January 2011 to the present.

14 Memoranda of Activity, or "MOAs," are documents
15 required to be used by DHOIG Special Agents to record
16 various types of investigative activities, including
17 interviews, reviews of records, arrests, search warrant
18 executions, service of subpoenas and surveillance. MOAs
19 were required to be completed truthfully and accurately.
20 MOAs were also required to be signed by the Special Agent
21 who authored the MOA, as well as the supervisor, and were
22 then to be maintained in the investigative case file.

23 According to the DHOIG policy, MOAs were required
24 to be submitted for approval by a Special Agent within five
25 working days after the activity, or as soon thereafter as

1 was practical.

2 In or about August and early September 2011, it
3 was well known as MCA that an internal DHOIG inspection
4 that previously had been scheduled for much earlier in the
5 year, had been rescheduled for September, and that part of
6 the inspection involved a review of MCA's criminal
7 investigative case files.

8 Supervisor A repeatedly reminded Special Agents to
9 make sure their criminal investigative case files were
10 up-to-date. Supervisor A appeared to be very worried about
11 the results of the inspection.

12 One morning in or about late August or early
13 September 2011, Supervisor A called for Defendant Ball to
14 join Supervisor and Special Agent A in the conference room
15 at MCA. When Defendant Ball entered the conference room,
16 Supervisor A and Special Agent A were discussing what needed
17 to be done to get one of Special Agent A's criminal
18 investigative case files ready for the internal inspection.

19 Supervisor A indicated that he wanted more
20 investigative activity documented in the case file.
21 Defendant Ball suggested that Special Agent A could
22 undertake certain kinds of investigative activity, such as
23 research or checks using law enforcement databases, and then
24 create MOAs memorializing that activity; however
25 Supervisor A made it clear that this suggestion to use

1 legitimate means to document additional activity would not
2 satisfy him.

3 A gap when no investigative activity had been
4 conducted in Special Agent A's case had occurred before
5 Special A was assigned to the case. Indeed, the gap
6 occurred both before Special Agent A had completed his
7 training and was present at MCA to investigate cases, and
8 before he was even employed at DHSOIG.

9 Supervisor A made it clear that he wanted false
10 MOAs created to fill the gap when no investigative activity
11 had been conducted in order to conceal the inactivity from
12 personnel conducting the internal DHSOIG inspection.

13 Supervisor A, Special Agent A, and Defendant Ball
14 discussed how certain kinds of inactivity, such as the use
15 of law enforcement databases, can be electronically traced
16 to see if they were actually used, when and by whom.
17 Special Agent A refused to sign the false MOAs that
18 documented activity before he had completed his training and
19 was present at MCA to investigate cases, and before he was
20 employed at DHSOIG.

21 However, at Supervisor A's direction, he agreed to
22 draft the MOAs and to falsely write that another Special
23 Agent had conducted the activity.

24 At Supervisor A's direction, Defendant Ball agreed
25 to sign the false MOAs that would be drafted by Special

1 Agent A so that the inspectors would not detect a gap in
2 investigative activity.

3 Within a few days or weeks before the internal
4 DHSOIG inspection, Special Agent A brought Defendant Ball
5 the false MOAs that they had discussed in the conference
6 room with Supervisor A. Defendant Ball signed and returned
7 them to Special Agent A. Special Agent A remarked to
8 Defendant Ball that he hoped Defendant Ball was not on leave
9 during the time when the MOAs attributed investigative
10 activity to him.

11 THE COURT: All right. Mr. Ball, you've heard
12 these facts described by the US Attorney. Were the facts
13 stated by the US Attorney true and correct?

14 DEFENDANT BALL: They are, sir.

15 THE COURT: Is there any part of what he said that
16 you would change?

17 DEFENDANT BALL: No, sir.

18 THE COURT: All right. Now we've been using some
19 pseudonyms. Do you know who these people are? Special
20 Agent A, do you know who that person -- do you-all have an
21 understanding of who that person is?

22 DEFENDANT BALL: Yes, sir.

23 THE COURT: All right. And the reason that we're
24 not disclosing this Special Agent A's name for this factual
25 recitation is what?

1 MR. KELLY: Well, Your Honor, consistent with the
2 Government's policy of not naming uncharged -- individuals
3 who at present are not charged in a charging document. The
4 only way to preserve that policy then with regard to the
5 factual basis is to identify them the way they would be in
6 the charging document at this time.

7 THE COURT: All right. I assume this is -- from
8 what you've just said, that it is the intention of the
9 Government to charge Special Agent A with some offense?

10 MR. KELLY: Your Honor, I'm not going to make -- I
11 don't believe I'm prepared to make a representation about
12 any other party here today, but I'll just say that they are
13 individuals here for whom, I think the facts speak for
14 themselves in terms of what kind of conduct they committed
15 and it's the Department of Justice policy not to identify
16 any party who is not charged.

17 THE COURT: And there was another, I think a
18 Special Investigator A. Mr. Ball, do you understand who
19 that is, as well, even though it's been -- he's been
20 described or she's been described by a pseudonym?

21 DEFENDANT BALL: I do, sir.

22 MR. KELLY: To make the Record totally clear, Your
23 Honor, there is a Special Agent A and a --

24 THE COURT: And a Supervisor.

25 MR. KELLY: -- Supervisor A, just --

1 THE COURT: Right. I stand corrected.

2 Do you understand who both of these individuals
3 are?

4 DEFENDANT BALL: I do, Your Honor.

5 THE COURT: All right. I need to make sure that
6 the facts, since we're using a fictitious name, that you're
7 in agreement with who these two persons are and with the
8 factual recitation as it pertains to both of them.

9 All right. It's the finding of the Court and in
10 this case, this Defendant is competent. He's capable of
11 entering an informed plea. He understands the nature of the
12 charge against him, the consequence of his plea of guilty
13 and the maximum punishment that he faces, and that this plea
14 of guilty is a knowing and voluntary plea, supported by
15 facts that contain the elements of the offense. The Court
16 therefore accepts this plea of guilty and the Defendant is
17 adjudged guilty of this offense.

18 Mr. Ball, the next step in this process -- one of
19 the next steps in this process for you is that now a
20 Probation Officer will be assigned to your case. That
21 Officer will be responsible for preparing a Presentence
22 Report about you and that's a report that the Court relies
23 upon, in part, to determine your sentence.

24 A Probation Officer should interview you in the
25 next few weeks to begin gathering in the information they

1 need about you. When they complete their investigation,
2 they will type up the report. A copy is given to your
3 lawyer, who is required to meet with you, review the report
4 with you to make sure that it is all correct.

5 You will then come back to be sentenced. When you
6 do so, you will have the opportunity to address the Court at
7 that time, so if there's anything that you'd like the Court
8 to consider in determining a fair and just sentence for you,
9 you'll have the opportunity to do so at that hearing.

10 I'm ordering in your case that the Presentence
11 Report be prepared by February 28th, any objection within
12 two weeks, and you are scheduled for sentencing here before
13 The Honorable Judge Tagle on April 16th, 2013 at 1:30 p.m.

14 MR. KELLY: Your Honor, I'll just make a
15 representation that -- and we'll certainly set that date.,
16 obviously if it's the Court's preference to do so.

17 THE COURT: This is a tentative date. If one goes
18 in and just file a motion then Judge Tagle will take it up.

19 The Court is sitting here handling the Docket of
20 Judge Tagle by consent. This case is one that Judge Tagle
21 will handle. The Court was happy to accommodate her in
22 taking this guilty plea.

23 It is this Court's practice not to accept appeal
24 waivers and I understood that that might have been a part of
25 this Plea Agreement, but the practice in this court is to

1 accept them and that's one of the reasons why I did that.

2 This is a non-binding Plea Agreement. Judge Tagle
3 can reject any part of the Plea Agreement that she may
4 desire to do so prior to sentencing and of course, if she
5 does that, the Defendant would have the right to take back
6 his guilty plea if he desired, but for now the Court has
7 accepted the Plea Agreement and the guilty plea.

8 And in terms of an exact final sentencing date,
9 Judge Tagle will advise the Parties of that --

10 MR. KELLY: I just wanted --

11 THE COURT: -- at the appropriate time.

12 MR. KELLY: If I may, Your Honor, just to make a
13 Record: We would anticipate so moving before Judge Tagle
14 only because we don't anticipate the Defendant's cooperation
15 will be complete by that date, so.

16 THE COURT: All right. You did talk about a bond
17 or a custody recommendations? I thought that was something
18 that you-all talked about. I don't know what the situation
19 is. Has he been magistrated? Is he on any kind of a bond
20 or Pretrial Orders of any sorts?

21 MR. GARCIA: Your Honor, no. Mr. Ball met with
22 Pretrial Services for the first time this morning.

23 THE COURT: All right.

24 MR. GARCIA: My understanding of the Agreement is
25 that he not to be taken into custody and be allowed to

1 continue on bond.

2 THE COURT: But there needs to be some conditions
3 of his release, --

4 MR. GARCIA: Yes, Your Honor.

5 THE COURT: -- custody not necessarily being a
6 part of that, but yet other conditions need to be imposed
7 that are standard in all felony cases.

8 Somebody here from Pretrial?

9 MR. ALVAREZ: Good afternoon. Steve Alvarez,
10 Pretrial Services. I have prepared a report for the Judge
11 to review.

12 THE COURT: All right. Has anybody seen that
13 report yet?

14 MR. ALVAREZ: No, Your Honor.

15 MR. KELLY: Government has not, Your Honor.

16 MR. ALVAREZ: I have copies and will obviously
17 provide one to the Court.

18 (Pause in the proceedings.)

19 MR. GARCIA: Your Honor, if I may? Sunday was
20 Mr. Ball's last day of employment because of this pending
21 charge --

22 THE COURT: Uh-huh.

23 MR. GARCIA: -- so he will be looking to seek out
24 new employment. We'd ask the Court to --

25 MR. KELLY: Excuse me.

1 MR. GARCIA: Your Honor, I'd object to any
2 recommendation --

3 THE COURT: I'm still on page two. You-all are
4 way ahead of me. Hold on a second.

5 (Pause in the proceedings.)

6 THE COURT: All right. So the recommendations
7 seem reasonable to the Court. Is there any particular one
8 that you have particular issue with, Mr. Garcia?

9 MR. GARCIA: None, Your Honor.

10 THE COURT: How about the Government?

11 MR. KELLY: No, Your Honor. We'd certainly defer
12 to the Court as to the amount of an unsecured bond, but all
13 the other recommendations we do not object to.

14 THE COURT: All right. Typically these are done
15 by a Magistrate Judge, who I feel have a lot better
16 expertise than myself in determining pretrial release bond
17 amounts and conditions, although I do set them occasionally.

18 I'm going to simply adopt the recommendations of
19 the Pretrial Services Reports and order that Mr. Ball be
20 released in conformance with all these twelve requirements
21 and whatever standard requirements that have been adopted by
22 this Court may add to these.

23 Anything else I need to address at this time?

24 MR. GARCIA: Not on behalf of the Defense, Your
25 Honor.

1 MR. KELLY: We would only add that we have the
2 signed versions of the factual basis of the plea agreement
3 here. I don't have the --

4 THE COURT: All right. We'll need that, as well
5 as the signed Plea Agreement. Have you -- I don't know if
6 you've tendered both of those to the Court, but we'll need
7 both of those.

8 And so Mr. Ball will need to --

9 MS. CAVAZOS: Will those be under seal or not?

10 THE COURT: I think those are --

11 MR. KELLY: They're not.

12 THE COURT: Yeah, they don't -- well, we -- the
13 policy of the Court that all Plea Agreements are under seal,
14 so the Plea Agreement will be under seal. The factual
15 recitation not under seal. Today's hearing was not under
16 seal, the Public Record what was -- what transpired here.

17 If for some reason the Parties feel it should be
18 sealed later, you can simply file a motion to do that and we
19 can consider that request, but for now it won't be.

20 So Mr. Ball, from here you're going to need to
21 execute some paperwork with respect to your release
22 conditions. You've seen the recommendation. You'll need to
23 be in compliance with those. You'll be interviewed by
24 Pretrial Service Officer and monitored regularly to ensure
25 compliance with these conditions.

1 You may find that there's a need to do something
2 outside these conditions, you just need to get permission
3 from your Pretrial Service Officer and the Courts ordinarily
4 to do that. If you needed to travel, for example, outside
5 the District or had some need for a passport for whatever
6 reason, I know your passport is going to be surrendered.

7 You'll be given a period of time to do that,
8 unless you brought your passport with you here today?

9 DEFENDANT BALL: I failed to do that today, Your
10 Honor. I will get it shortly.

11 THE COURT: All right. You'll be given a
12 reasonable period of time to surrender that to the Pretrial
13 Services Office.

14 All right. Anything else I need to address?

15 MR. KELLY: No, Your Honor.

16 MR. GARCIA: No, Your Honor.

17 THE COURT: Thank you all for being here this
18 afternoon. You're excused at this time.

19 DEFENDANT BALL: Thank you, sir.

20 MR. GARCIA: Good afternoon.

21 THE MARSHAL: All rise.

22 (Proceeding adjourned at 3:41 p.m.)

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1 *I certify that the foregoing is a correct
2 transcript to the best of my ability from the electronic
3 sound recording of the proceedings in the above-entitled
4 matter.*

5 /S/ MARY D. HENRY

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